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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,474	08/25/2005	Rafi (Ralph) Sabel	CU-4176 RJS	3871
26530	7590	12/03/2008	EXAMINER	
LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604			ROBINSON, GRETA LEE	
ART UNIT	PAPER NUMBER		2169	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,474	<b>Applicant(s)</b> SABEL, RAFI (RALPH)
	<b>Examiner</b> Greta L. Robinson	<b>Art Unit</b> 2169

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 September 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 27,29-39 and 42-50 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 27, 29-39, 42-50 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 16 September 2008 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 27, 29-39 and 42-50 are pending in the present application.
2. Claims 27, 29, 39 and 43 have been amended. Claims 1-26, 28, 40 and 41 have status cancelled.

***Information Disclosure Statement***

3. The information disclosure statement filed September 16, 2008 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

***Drawings***

4. The drawings were received on September 16, 2008 and June 16, 2008. These drawings are acceptable; however the examiner respectfully maintains objections to Figures 2 and 3. Note replacement Figures 2 and 3 do not contain any modification.

5. The drawings are objected to because Figures 2 and 3 contain partial views. See 37 CFR 1.84(h) and 37 CFR 1.84(u). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the

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filings date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

7. The disclosure is objected to because of the following informalities: Applicant has not properly defined the term "sniffing" see page 8 line 37.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 27, 29-39 and 42-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 27, and 39, the following limitation is vague and/or not clear: "upon determining that the database contains the record, setting one or more counters, which represent a total amount of the data in the record that has been transferred, such that the amount includes a quantity of the piece of data, to thereby record the transfer of the data" [see: claim 27 lines 5-8; and claim 39 lines 5-9]. Claims 29-38 and 42-50 are rejected based on dependency.

10. Claims 27, 29-39 and 42-50 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: an operational procedure that transfers data. Note claims 27 and 39 recite "the record that has been transferred" however this limitation lacks proper antecedent basis. Also, the claim appears to omit an alternative procedure for condition when database does not contain a record.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 27, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch Jr. et al. US Patent 6,240,452 B1 in view of in view of Shah Analysis of a Statistics Counter Architecture.

Regarding claim 27, **Welch Jr. et al.** teaches a method of recording a transfer of a piece of data [note: "monitoring file transfers in a computer network" abstract ], the method comprising:

i. determining whether a database contains a record that has data which represents the piece of data [note: column 9 lines 5-15 determine whether the packet just received is part of a new logical connection"; abstract; also Figure 5 step 112 "IS THIS A FILE TRANSFER PACKET" ]; and

ii. upon determining that the database contains the record, setting one or more counters, which represent a total amount of the data in the record that has been transferred, such that the amount includes a quantity of the piece of data, to thereby record the transfer of the data [note: column 10 lines 1-15 "CME 83 complete its updating

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of connection record 93 in step 200 by updating appropriate byte count fields for the logical connection's connection record ... transmits data to peer A, then to peer total bytes received" ].

Welch Jr. et al. teaches the invention substantially as applied to independent claim 27; however they do not explicitly teach setting the data in the record to correspond with an indicator that has a first byte count less than a second byte count of the piece of data. Shah provides for this element. Note Shah teaches a counter management algorithm in which values may be set see page 108, Figure 1 and abstract. It would have been obvious to one of ordinary skill at the time of the invention to have combined Shah with Welch Jr. et al. because a counter management algorithm would give more flexibility to the end-user and allow the user to define the parameters for tracking data.

13. Regarding claim 38, computer hardware storing software, which when executed causes a computer to carry out the method as claimed in claim 27 [note: column 3 line 55 through column 4 line 11; Figures 1, 3 and 4].

14. The limitations of apparatus claim 39 parallels method claim 27; therefore it is rejected under the same rationale.

#### ***Response to Arguments***

15. Applicant's arguments filed September 16, 2008 have been fully considered but they are not persuasive. In the response Applicant argued the following major points:

ARGUMENT: Replacement drawings have been submitted for Figures 1-3; however Applicant states Figures 2 and 3 do not represent partial views.

RESPONSE: Figures 2 and 3 depict text elements as one embodiment in describing the present invention; however the text does not include boundaries or flow chart connections. The examiner suggests use of brackets to clarify all elements are connected and to be interpreted as a single view.

ARGUMENT: The examiner objects to the term "sniffing" as not properly defined in the specification. Applicant states the term is known to those of ordinary skill in the computer and computer network art. Applicant submits documents from About.com and Wikipedia which define term.

RESPONSE: The examiner respectfully maintains the objection. Applicant should formally state how the term should be interpreted within the remarks. The examiner appreciates references that clarify a packet sniffer, however the examiner notes this specific term is not used in the cited passage.

ARGUMENT: Applicant states amendment to claims 27 and 39 are believed to traverse rejections under 35 USC 101 and 35 USC 112 second paragraph.

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RESPONSE: Applicant's amendment overcomes rejection cited under 35 USC 101; however the rejection cited under 35 USC 112 second paragraph regarding clarity and/or omitted limitation is respectfully maintained.

ARGUMENT: The independent claims have been amended to recite the additional function of setting the data in the record to correspond with an indicator that has a byte count less than a byte count of the piece of data. Applicant states Shah et al. combined with Welch Jr would not result in claimed feature. Applicant states Shah et al. is concerned with hardware design and not network log management.

RESPONSE: The examiner notes the claims recite both the term count and counter referring to both the computer hardware and the size of a record. Prior art reference Shah et al. is directed to both the hardware features and software features of a counter. Shah et al. teaches implementation of a counter management algorithm (CMA) that relate to design aspects in recording data transfer [abstract, page 108 and figure 1].

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shibayama US Patent 6,625,644

Cason et al. US Patent 6,631,380

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tony Mahmoudi can be reached on (571)272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greta L. Robinson/

Primary Examiner, Art Unit 2169a

December 1, 2008